

**OCT 15 2003**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

TERESA GARCIA-DE DELGADO; MARIA  
ANDREA DELGADO-GARCIA,

Petitioners,

v.

JOHN ASHCROFT, Attorney General,

Respondent.

No. 02-72225

Agency Nos. A75-281-415  
A75-281-416

MEMORANDUM\*

On Petition for Review of an Order of the  
Board of Immigration Appeals

Submitted October 10, 2003\*\*  
Pasadena, California

Before: WALLACE, RYMER, and TALLMAN, Circuit Judges.

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\* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

\*\* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Teresa Garcia-De Delgado and her daughter, Maria Andrea Delgado-Garcia, petition for review from an order by the Board of Immigration Appeals dismissing their appeal of a decision by the Immigration Judge (IJ) denying their applications for suspension of deportation and cancellation of removal. We lack jurisdiction to review the Delgados' claim concerning the timing of their removal proceedings, and we deny the petition as to their other claims.

## I

The Delgados' contention that we may review pre-commencement actions of the Immigration and Naturalization Service (INS) boils down to an attack on the INS's decision to initiate removal proceedings after the effective date of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), Pub. L. 104-208, 110 Stat. 3009 (1996), rather than deportation proceedings. However, their argument is foreclosed by *Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002). We lack jurisdiction over decisions when, as well as whether, to commence a proceeding. INA § 242(g), 8 U.S.C. § 1252(g).

## II

The Delgados' equitable estoppel claim fails in light of *Cortez-Felipe v. INS*, 245 F.3d 1054, 1057 (9th Cir. 2001). Their due process and equal protection claims are not colorable because they do not have a protectable interest in the timing of their removal proceedings and they have not shown that similarly situated aliens were treated differently. *See Torres-Aguilar v. INS*, 246 F.3d 1267, 1271 (9th Cir. 2001).

### III

The IJ did not abuse his discretion by denying the Delgados' discovery requests because they did not establish that the evidence requested was essential. *See Kaur v. INS*, 237 F.3d 1098, 1100 (9th Cir. 2001). Nor was the notice to appear improvidently issued; as we have explained, the INS has discretion to decide when to initiate proceedings. Finally, no good cause was shown for a continuance, so the IJ did not err by denying the Delgados' motion to terminate or alternatively to continue the proceedings.

PETITION DENIED.